

May 20 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

## IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 10-0029

Joe G. Hollingsworth, Esq.  
Katharine R. Latimer, Esq.  
HOLLINGSWORTH LLP  
1350 I St. N.W.  
Washington, DC 20005  
Telephone: (202) 898-5800  
Fax: (202) 682-1639  
Email: [jhollingsworth@hollingsworthllp.com](mailto:jhollingsworth@hollingsworthllp.com)  
[klatimer@hollingsworthllp.com](mailto:klatimer@hollingsworthllp.com)

W. Carl Mendenhall, Esq.  
WORDEN THANE P.C.  
Attorneys at Law  
P.O. Box 4747  
Missoula, MT 59806-4747  
Telephone: (406) 721-3400  
Fax: (406) 721-6985  
Email: [cmendenhall@wthlaw.net](mailto:cmendenhall@wthlaw.net)

Attorneys for Novartis Pharmaceuticals Corporation

FILED

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*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

PEGGY L. STEVENS,

Plaintiff/Appellee,

-vs-

NOVARTIS PHARMACEUTICALS  
CORPORATION,

Defendant/Appellant.

**NPC'S OPPOSITION TO  
APPELLEE'S MOTION FOR  
OVERLENGTH BRIEF**

1 A party that wishes to file an over-length brief must demonstrate  
2 “extraordinary justification.” M.R.App.P. 12(10). Motions to file over-length  
3 briefs “will not be routinely granted.” *Id.* Stevens has done nothing to  
4 demonstrate “extraordinary justification” to file a brief one and one half  
5 times as long as permitted under Rule 11(4). Her motion should thus be  
6 denied. See *Idaho Asphalt Supply v. Montana Dept. of Transp.*, 1998 MT  
7 312, ¶ 6, 292 Mont. 162, 974 P.2d 1117 (denying motion to file over-length  
8 brief because moving party failed to show good cause and court found  
9 nothing particularly unusual or complex about the legal issues raised in the  
10 appeal or cross-appeal).

11 Montana has long required appellees to conform to word limitations  
12 whether or not they also assert cross-appeals. See Rule 12(4) (providing  
13 that briefs that both respond to an appellant’s opening brief and also argue  
14 the appellee’s cross-appeal must conform to the 10,000-word limit set by  
15 Rule 11(4)). The mere fact that Stevens intends to cross-appeal, then,  
16 obviously cannot constitute grounds to exceed those limitations.<sup>1</sup>

17 Stevens also has not demonstrated that the appellate issues  
18 presented by this case are so complex that they merit an expansion of the  
19 Court’s word limitations for briefs, much less an expansion of one and a  
20 half times the normal limit. In 2000, this Court amended Rule 12(10) so  
21 that a motion to exceed word limits no longer required just “permission of  
22 the court,” but instead must show “extraordinary justification.” The  
23

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24 <sup>1</sup> Rule 11(4) limits NPC to 5,000 words for its reply brief, in which it must not only  
25 respond to whatever arguments Stevens makes to its points of appeal but also set forth  
26 its entire case in opposition to Stevens’ cross-appeal. Any expansion of Steven’s word  
limits would inevitably add complexity to the issues before this court and would be likely  
to require NPC to seek leave to exceed the word limits for its reply as well.

1 amended rule also stated that such motions “will not be routinely granted.”  
2 Plaintiff’s essentially identical motion and supporting affidavit fall far short of  
3 making any such showing, instead merely offering conclusory statements  
4 such as “[t]his is a complex case” and that she will have to include  
5 additional facts and procedural history. NPC was able to argue its entire  
6 appeal – including a complete factual and procedural background – with  
7 only 9,768 words.<sup>2</sup>

8 Procedural rules such as word limitations exist to conserve judicial  
9 resources by compelling litigants to pick and choose the most important  
10 issues and best arguments to pursue. Permitting Stevens to file an over-  
11 length brief would inevitably result in less focused briefing and inclusion of  
12 peripheral issues, requiring the Court and NPC to waste time addressing  
13 issues that should never have been briefed in the first place. The entire  
14 trial of this case took only six days, and there has been no showing of  
15 exceptional complexity or other grounds for altering the ordinary briefing  
16 rules. Stevens has not met her burden of demonstrating extraordinary  
17 circumstances meriting leave to file an over-length brief, much less one 1.5  
18 times the length provided by the rules. The motion should be denied.

19 DATED this 19<sup>th</sup> day of May, 2010.

20 Joe G. Hollingsworth, Esq.  
21 Katharine R. Latimer, Esq.  
22 HOLLINGSWORTH LLP  
23 1350 I St. NW  
Washington, DC 20005

24 <sup>2</sup> As the appellee, Stevens need not make her own separate statement of the issues or  
25 of the case, providing her with ample room to address whatever additional background  
26 she deems necessary. Though she claims that NPC’s statements were incomplete, she  
does not substantiate this, and in any event adding some omitted facts would require far  
fewer words than NPC took to set forth the history in the first place.

and

WORDEN THANE P.C.  
Attorneys for Novartis  
Pharmaceuticals Corporation

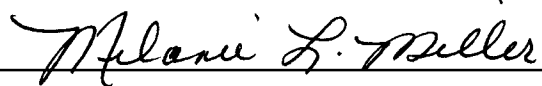
By:

  
W. Carl Mendenhall

CERTIFICATE OF SERVICE

I certify that on May 19, 2010, I served a copy of the preceding  
document on the following:

Terry N. Trieweiler, Esq. Trieweiler Law Firm P.O. Box 5509 Whitefish, MT 59937 Attorneys for Peggy L. Stevens	<input checked="" type="checkbox"/> Regular Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email <input type="checkbox"/> Fax
James T. Towe, Esq. Towe Law Offices P.O. Box 7826 Missoula, MT 59807-7826 Attorneys for Peggy L. Stevens	<input checked="" type="checkbox"/> Regular Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email <input type="checkbox"/> Fax
Robert G. Germany, Esq. Pittman, Germany, Roberts & Welsh, LLP 410 South President Street Jackson, MS 39201 Attorneys for Peggy L. Stevens	<input checked="" type="checkbox"/> Regular Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email <input type="checkbox"/> Fax
Bartlett T. Valad, Esq. Valad & Vecchione, PLLC 3863 Plaza Drive Fairfax, VA 22030 Attorneys for Peggy L. Stevens	<input checked="" type="checkbox"/> Regular Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email <input type="checkbox"/> Fax

  
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